

**Informed Choice, Not Informed Consent: Towards a
meaningful consideration of pre-treatment advice**

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Abstract

Healthcare professionals, legal professionals, patients, scholars and members of Research Ethics Committees all hear the term 'informed consent' and seem to assume a common meaning. It is a phrase often said and widely accepted, but what does it really mean? This thesis challenges the doctrine of 'informed consent' and argues that it lacks coherence and fails in its foundational goal: to protect the autonomous patient. It argues that 'informed consent' is a misnomer; that the process under consideration is not about the consent to treatment, rather it is about individual choice.

This thesis critically examines the evolution of the doctrine of 'informed consent' across three jurisdictions (the United States, the United Kingdom and Australia) and focuses on the central debates. These include the appropriate measure for standard of care and the nature of the test for causation. It asserts that these ongoing issues mask the true dilemma facing the Courts which is the problematic nature of linking a dignitary harm (the denial of complete information) with a logically irrelevant physical harm (the manifestation of a physical risk inherent in the treatment).

The thesis departs from existing literature on 'informed consent' by challenging the relevance of the term 'consent' and proposing the adoption of choice. The proposed model of choice emerges from the critical analysis of the law and the existing body of scholarly literature. These both demonstrate an ongoing struggle with the ability of the existing doctrine to achieve the core aim of protection of autonomy. Central to this proposal is the adoption of a narrow, purposive definition of autonomy which is based upon the ideal of narrative autonomy. Under this model the individual is identified as a storyteller, in control of their own narrative path. Crucial to this ideal is the provision of information regarding possible future selves, and it is here that the key concepts of autonomy and choice under the proposed model of 'informed choice' meet.

The thesis concludes by drawing these two themes together and demonstrating that clarity can only be found by retreating from 'informed consent' and adopting a legal ideal of 'informed choice'.

I, Bernadette Richards, certify that this work contains no material which has been accepted for the award of any other degree or diploma in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text.

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Signed (B.J.Richards)

Date

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